IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4692 OF 2006

Chandra Shekar Datta Shriyan ... Petitioner

V/s.

Customs Excise Service Tax Appellate Tribunal & Ors. ... Respondents

Mr. Atish D. Ray for the petitioner.
Mr. L.S. Shetty with Mr. A.S. Rao for the respondents.

CORAM : H.L. GOKHALE &
V.R. KINGAONKAR,JJ.
DATED : 3rd August, 2006

P.C.

. Heard Mr. Atish D. Ray for the petitioner. Mr. Shetty appears for the respondents.

2. Rule. Made returnable forthwith.

3. The petitioner seeks to challenge the order of the Central Excise and Service Tax Appellate Tribunal dismissing the application for condonation of delay in filing the petitioner’s appeal, which order was passed on 16th November, 2005 and the subsequent order dated 4th May, 2006 declining to restore the appeal.

4. It has so happened that when the application for condonation of delay was first moved on 16th

November, 2005, one Mr. Nadkarni appeared for the petitioner and stated that he had no instructions from the applicant and therefore he was not pressing the application for condonation of delay. It is the case of the petitioner that Mr. Nadkarni was not briefed in the matter and it was Smt. Maniprakash who was briefed in the matter.

5. Later on, they took out application to set aside the order dismissing the application for condonation of delay. The applicant stated that Smt. Maniprakash was instructed to appear, but she failed to appear on earlier date. When the matter reached before the Tribunal on 4th May, 2006, Smt. Maniprakash appeared and in a query by the Bench, she stated that she had been making efforts to contact the petitioner. The petitioner had requested her to appear in the matter, but she had not received necessary instructions and therefore she had informed Mr. Nadkarni by giving him letter that no instructions were forthcoming from the party and that the matter be adjourned. She told the Tribunal that instead of whatever was instructed to Mr. Nadkarni, the Bench noted that he had no instructions and therefore he was not pressing the condonation

application. This explanation of Smt. Maniprakash was not found to be satisfactory by the Tribunal and therefore the Tribunal declined to restore the appeal and application for condonation.

6. The delay which was sought to be condoned was just about 12 days. This being a position, the Tribunal could have imposed appropriate terms to the party and could have restored the application for condonation of delay. It has been stated time and again that the party should not suffer assuming that there is any error or failure on the part of advocate concerned.

7. On a query from the Court Mr. Ray stated that the petitioners had given Bank Guarantee before adjudicating authority to the tune of Rs. 6 lacs and that has been encashed in the meanwhile.

8. In view of what is stated above, though Mr. Shetty appeared for the respondent No. 2 & 3 and strenuously opposed the petition, we allow it and set aside both these orders namely first one dismissing the application for condonation of delay and secondly declining to restore the appeal. Consequently, the

application for condonation of delay will stand restored to the file of Tribunal. It will be for the Tribunal to decide the same on merits and appropriate terms.

9. Rule made absolute as above.

10. The petitioner will pay cost of Rs. 3000/- to the respondents.

[H.L. GOKHALE, J.]

[V.R. KINGAONKAR, J.]